

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELECTRONIC FRONTIER FOUNDATION,

Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE,

Defendant.

Civ. A. No. 06-CV-1708 (CKK)

FIFTH DECLARATION OF DAVID M. HARDY

I, David M. Hardy, declare as follows:

(1) I am currently the Section Chief of the Record/Information Dissemination Section ("RIDS"), Records Management Division ("RMD"), at the Federal Bureau of Investigation Headquarters ("FBIHQ") in Washington, D.C. I have held this position since August 1, 2002. Prior to joining the FBI, from May 1, 2001 to July 21, 2002, I was the Assistant Judge Advocate General of the Navy for Civil Law. In that capacity, I had direct oversight of Freedom of Information Act ("FOIA") policy, procedures, appeals, and litigation for the Navy. From October 1, 1980 to April 30, 2001, I served as a Navy Judge Advocate at various commands and routinely worked with FOIA matters. I am also an attorney who has been licensed to practice law in the state of Texas since 1980.

(2) In my official capacity as Section Chief of RIDS, I supervise approximately 192 employees who staff a total of ten (10) FBIHQ units and a field operational service center unit with the collective mission to effectively plan, develop, direct, and manage responses to requests for access to FBI records and information pursuant to the FOIA; Privacy Act; Executive Order 12958, as amended; Presidential, Attorney General, and FBI policies and procedures; judicial decisions; and Presidential and Congressional directives. The statements contained in this

declaration are based upon my personal knowledge, upon information provided to me in my official capacity, and upon conclusions and determinations reached and made in accordance therewith.

(3) Due to the nature of my official duties, I am familiar with the procedures followed by the FBI in responding to requests for information from its files pursuant to the provisions of the FOIA, 5 U.S.C. § 552, and the Privacy Act of 1974, 5 U.S.C. § 552a. Specifically, I am aware of the treatment which has been afforded the FOIA request of plaintiff, the Electronic Frontier Foundation, for documents related to two electronic surveillance systems. More specifically, plaintiff's August 11, 2006 FOIA request seeks access to records pertaining to System DCS-3000 and Red Hook, and any reports made by the FBI to Congress on the FBI's use of these technologies.

(4) As Ordered by the Court on May 7, 2007, this declaration provides the Court and plaintiff with a status of the progress made by the FBI with regard to plaintiff's FOIA request.

CORRESPONDENCE

(5) See Hardy Declaration dated February 9, 2007, ¶¶ 25-28; Second Hardy Declaration, dated August 3, 2007, ¶¶ 5-7; Third Hardy Declaration dated October 30, 2007, ¶¶ 6-8; and Fourth Hardy Declaration dated February 1, 2008, ¶¶ 5-8, for a history of earlier correspondence in this case.

(6) By letter dated February 11, 2008, FBIHQ released documents to plaintiff subject to withholdings pursuant to exemptions (b)(1), (b)(2), (b)(6), (b)(7)(C) and (b)(7)(E). Plaintiff was advised that 991 pages had been reviewed and 383 pages were being released. Plaintiff was advised that this was the tenth and final interim release as ordered by the Court on May 7, 2007 for documents concerning electronic surveillance systems known as DCS-3000 and Red Hook.

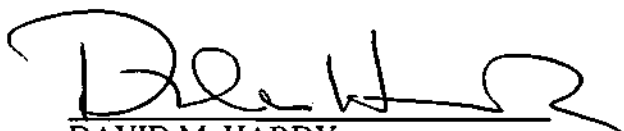
Plaintiff was also advised that the number of documents reviewed actually totaled 1,619 pages and that after a review by the technical operations group that manages the system it was determined that 628 of those pages were not responsive to plaintiff's request. FBIHQ advised plaintiff that a decision had not yet been made concerning plaintiff's request for a fee waiver and that the FBI would be corresponding with plaintiff in the near future on that subject. Further, plaintiff was advised that pursuant to 28 C.F.R. § 16.11, there is a duplication fee of ten cents per page and that no fees are assessed for the first 100 pages. Plaintiff was further advised that if it is determined that plaintiff does not qualify for a fee waiver, duplication fees would be assessed accordingly. **(See Exhibit A.)**

CONCLUSION

(7) To date, the FBI has made ten (10) interim releases to plaintiff, consisting of 5,240 pages released out of a total of 7,935¹ pages reviewed. In accordance with the Court Order dated May 7, 2007, the FBI has reviewed and processed all pages responsive to plaintiff's request.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct and that Exhibit A attached hereto is a true and correct copy.

Executed this 30th day of April, 2008.


DAVID M. HARDY
Section Chief
Record/Information Dissemination Section
Records Management Division
Federal Bureau of Investigation

¹ In preparing this Declaration, the FBI discovered an error in our release letters that was repeated in the Second, Third and Fourth Hardy Declarations. Our system indicates that we actually reviewed 7,935 responsive pages, 44 pages more than our letters and declarations indicated at 7891 pages.

Washington, D.C.

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FOR THE DISTRICT OF COLUMBIA

_____)	
ELECTRONIC FRONTIER FOUNDATION,)	
)	
Plaintiff,)	
)	
v.)	Civ. A. No. 06-CV-1708 (CKK)
)	
U.S. DEPARTMENT OF JUSTICE,)	
)	
Defendant.)	
_____)	

Exhibit A



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

FEBRUARY 11, 2008

ESQ. MARCIA HOFMANN
ELECTRONIC FRONTIER FOUNDATION
454 SHOTWELL STREET
SAN FRANCISCO, CA 94110

Subject: SYSTEM DCS-3000 and RED HOOK

FOIPA Nos. 1056287- 000 and 1056307-1

Dear Requester:

The enclosed documents were reviewed under the Freedom of Information/Privacy Acts (FOIPA), Title 5, United States Code, Section 552/552a. Deletions have been made to protect information which is exempt from disclosure, with the appropriate exemptions noted on the page next to the excision. In addition, a deleted page information sheet was inserted in the file to indicate where pages were withheld entirely. The exemptions used to withhold information are marked below and explained on the enclosed Form OPCA-16a:

Section 552		Section 552a
<input type="checkbox"/> (b)(1)	<input type="checkbox"/> (b)(7)(A)	<input type="checkbox"/> (d)(5)
<input type="checkbox"/> (b)(2)	<input type="checkbox"/> (b)(7)(B)	<input type="checkbox"/> (j)(2)
<input type="checkbox"/> (b)(3) _____	<input type="checkbox"/> (b)(7)(C)	<input type="checkbox"/> (k)(1)
_____	<input type="checkbox"/> (b)(7)(D)	<input type="checkbox"/> (k)(2)
_____	<input type="checkbox"/> (b)(7)(E)	<input type="checkbox"/> (k)(3)
_____	<input type="checkbox"/> (b)(7)(F)	<input type="checkbox"/> (k)(4)
<input type="checkbox"/> (b)(4)	<input type="checkbox"/> (b)(8)	<input type="checkbox"/> (k)(5)
<input type="checkbox"/> (b)(5)	<input type="checkbox"/> (b)(9)	<input type="checkbox"/> (k)(6)
<input type="checkbox"/> (b)(6)		<input type="checkbox"/> (k)(7)

991 **page(s)** were reviewed and 383 **page(s)** are being released.

Document(s) were located which originated with, or contained information concerning other Government agency(ies) [OGA]. This information has been:

- referred to the OGA for review and direct response to you.
- referred to the OGA for consultation. The FBI will correspond with you regarding this information when the consultation is finished.

You have the right to appeal any denials in this release. Appeals should be directed in writing to the Director, Office of Information and Privacy, U.S. Department of Justice, 1425 New York Ave., NW, Suite 11050, Washington, D.C. 20530-0001 within sixty days from the date of this letter. The envelope and the letter should be clearly marked "Freedom of Information Appeal" or "Information Appeal." Please cite the FOIPA number assigned to your request so that it may be easily identified.

The enclosed material is from the main investigative file(s) in which the subject(s) of your request was the focus of the investigation. Our search located additional references, in files relating to other

individuals, or matters, which may or may not be about your subject(s). Our experience has shown, when ident, references usually contain information similar to the information processed in the main file(s). Because of our significant backlog, we have given priority to processing only the main investigative file(s). If you want the references, you must submit a separate request for them in writing, and they will be reviewed at a later date, as time and resources permit.

☐ See additional information which follows.

Sincerely yours,



David M. Hardy
Section Chief
Record/Information
Dissemination Section
Records Management Division

Enclosure(s)

Please be advised that this is the tenth and final interim release as ordered by the court on May 7, 2007 for documents concerning surveillance systems known as DCS-3000 and Red Hook.

The first page of this correspondence reflects that 991 pages were reviewed for this release. There were actually 1,619 pages reviewed, however, after a review by the technical operations group that manages the system, they determined that 628 pages of this material was not responsive to the request.

A decision has not been made concerning your request for a waiver of fees. We will be corresponding with you concerning that request in the near future. In the interim, we are providing you with the enclosed documents. Pursuant to Title 28, Code of Federal Regulations, Section 16.11, there is a fee of ten cents per page for duplication. No fees are assessed for the first 100 pages. If it is determined that you do not qualify for a fee waiver, duplication fees will be assessed accordingly.